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1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF NEW YORK

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4 UNITED STATES OF AMERICA

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7

8 -versus-

04-CR-402

9 (DETENTION HEARING)

10

11 YASSIN MUHIDDIN AREF

12 and MOHAMMED MOSHARREF HOSSAIN

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14 Defendants.

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17 TRANSCRIPT OF PROCEEDINGS held in and for  
18 the United States District Court, Northern District of  
19 New York, at the James T. Foley United States Courthouse,  
20 445 Broadway, Albany, New York 12207, on TUESDAY,  
21 AUGUST 10, 2004, before the HON. DAVID R. HOMER,  
22 United States District Court Magistrate Judge.

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2 **APPEARANCES:**

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5 **FOR THE GOVERNMENT:**

6 HON. GLENN SUDDABY, United States Attorney - NDNY

7 BY: DAVID M. GRABLE, Assistant U.S. Attorney

8 BY: GREGORY WEST, Assistant U.S. Attorney

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12 **FOR THE DEFENDANT AREF:**

13 BY: TERENCE E. KINDLON, ESQ.

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15 **FOR THE DEFENDANT HOSSAIN:**

16 BY: KEVIN A. LUIBRAND, ESQ.

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1 (Court commenced in chambers at 2:03 PM.)

2 (Discussion off the record.)

3 THE CLERK: United States of America versus  
4 Yassin Mohammed Aref and Mohammed Mosharref Hossain,  
5 04-CR-402.

6 Can we have appearances for the record.

7 MR. GRABLE: Dave Grable and Gregory West  
8 appearing on behalf of the United States. Good afternoon,  
9 your Honor.

10 MR. KINDLON: Terence Kindlon, 74 Chapel  
11 Street, Albany, on behalf of the accused. Good afternoon,  
12 sir.

13 THE COURT: The record should reflect that  
14 we're in chambers to discuss a matter that's just been  
15 raised. Mr. Grable, if you could repeat what you just told  
16 me off the record.

17 MR. GRABLE: Sure. Your Honor, the  
18 Government wanted to speak with the Court beforehand with  
19 Mr. Kindlon here because we had some concerns about a  
20 potential conflict issue and just wanted to make sure that  
21 it didn't raise problems down the road.

22 It's our understanding that Mr. Kindlon  
23 himself served in the U.S. military and has relatives  
24 currently serving in the U.S. military. We had heard  
25 through the rumor mill that he had a son who was serving or

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1 served in Iraq, but I spoke with him before coming here and  
2 he disabused me of that notion.

3 THE COURT: Mr. Kindlon did.

4 MR. GRABLE: Yes. And he should explain  
5 fully I think the nature of his relatives and the  
6 relationship with the military. Our concern here is that,  
7 as has been disclosed in a search warrant affidavit that has  
8 now been unsealed, this defendant's name was found in an  
9 address book that was recovered by U.S. forces following a  
10 raid on a terrorist camp in northern Iraq, and our concern  
11 is that we would certainly like to make sure that the  
12 defendant understands, at least if there is a conflict  
13 issue, the relationship there, and executes or makes some  
14 sort of waiver just to avoid problems down the road.

15 THE COURT: Mr. Kindlon.

16 MR. KINDLON: I thank Mr. Grable for an  
17 excess of caution. And I suspect what the source of the  
18 concern is arises from the fact that I have one son who's a  
19 lawyer and a Captain in the United States Marine Corps right  
20 now, but he's stationed in Camp Lajeune, North Carolina, and  
21 as of last week was informed that it is unlikely he's going  
22 to be deployed any time soon. I have another -- that son is  
23 Lee Kindlon; he's 28 year old. I have an older son, Gordon  
24 Kindlon, who's my adopted son actually, and he is 33 years  
25 old, and for much of last year and until April 1st of 2004,

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1 he was working with an NGO, non-governmental organization,  
2 called Mercy Corp in southern Iraq. On April the 1st of  
3 2004, he took new employment with the United Nations and  
4 that employment is in Afghanistan which is where he's  
5 currently stationed. And his contract with the UN to be in  
6 Afghanistan terminates, I believe, at the end of October.  
7 And he has told his mother and me that it is his intention  
8 at that time to return to the United States.

9 Now, I do have a, I do have a cousin who has  
10 a son who enlisted in the Marine Corps a year or two ago. I  
11 haven't heard anything about him. I don't know where he is.  
12 I don't know what he's doing. So -- and I don't know, I  
13 don't know the fellow, I've never met him in my life. I  
14 heard through the family grapevine he was...

15 THE COURT: Mr. Grable, what relief do you  
16 seek or procedure are you recommending?

17 MR. GRABLE: I think it would be sufficient  
18 if the defendant were informed of the family relationships  
19 or relatives that Mr. Kindlon has, at least this one, the  
20 son who's currently in the Marine Corps and perhaps the  
21 cousin with the son. I don't know what you call that. A  
22 cousin once removed.

23 MR. KINDLON: I guess. I don't know.

24 MR. GRABLE: I don't know the answer to that.

25 MR. KINDLON: I couldn't pick him out of a

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1 line-up, quite frankly.

2 MR. GRABLE: If the defendant could have a  
3 communication perhaps with Mr. Kindlon and otherwise have  
4 something put on the record indicating that he understands  
5 this familial affiliation. And it's my understanding, Mr.  
6 Kindlon, that you served in the -- you were a decorated  
7 veteran in the military during the Vietnam --

8 MR. KINDLON: The reason that came up was  
9 because somebody called my office and said I wasn't much of  
10 an American because I was representing...

11 MR. GRABLE: I'm not saying it came up in  
12 this case. I know that it came up before; I know you served  
13 this country. And I think it's also worthwhile to have the  
14 defendant -- unless the Court thinks I'm out in left field  
15 here -- have the defendant understand that and say I  
16 understand all that and it does not concern me, doesn't  
17 cause me any concern about Mr. Kindlon's ability to  
18 zealously represent me in this case.

19 THE COURT: I think it's close to left field  
20 but I understand the abundance of caution that you bring to  
21 the issue.

22 Mr. Kindlon, what's your thought? I'm torn  
23 being doing nothing and leaving it to you to talk to your  
24 client first and then having you proceed in a week or so.

25 MR. KINDLON: I will advise him. With all

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1 objectivity, it strikes me as truly excessive caution. The  
2 fact is, as I understand it, that was an Army -- a U.S. Army  
3 unit that made the raid. The Marine Corps wasn't even  
4 involved. Whatever that may be worth.

5 THE COURT: Well, it sounds to me like  
6 there's no basis for believing there's any connection  
7 between the notebook or whatever it was that was seized in  
8 the northern Iraqi camp and any member of the Kindlon  
9 family, is what Mr. Kindlon is telling me.

10 MR. KINDLON: That's exactly what I'm saying,  
11 yes.

12 THE COURT: There's no connection there. Now  
13 we're talking about whether or not there's a potential  
14 conflict which may arise either from Mr. Kindlon's past  
15 military service or the military service or government  
16 service of a child; is that where we are?

17 MR. GRABLE: Yes, your Honor.

18 THE COURT: If there were an issue related to  
19 the seizure of the notebook, I think we probably would have  
20 to talk about something because the potential would be  
21 witness issues and so forth. The other conflict I'm  
22 missing.

23 MR. KINDLON: Then I guess -- excuse me. I'm  
24 sorry. That notebook was seized when?

25 MR. GRABLE: June of 2003.

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1                   MR. KINDLON: June of 2003. I think my son  
2 Captain was still in Quantico, Virginia going through what  
3 they call the basic school down there.

4                   THE COURT: But I also don't want to open the  
5 door for any future litigation and issues I don't see. And  
6 so I'm -- in an abundance of caution, we can probably put  
7 this on the record, I suggest we do it on a different day to  
8 give Mr. Kindlon a chance to talk to his client about it  
9 first, and then we'll have him brought in on some occasion  
10 and put it on the record.

11                  MR. KINDLON: Will do, Judge.

12                  THE COURT: As I understand it -- is there  
13 anything else on the record?

14                  MR. GRABLE: No.

15                  THE COURT: Off the record.

16                  MR. GRABLE: Thanks, Judge.

17                  (Discussion off the record.)

18                  (Adjourned in chambers at 3:15 PM.)

19                  (In open court at 3:17 PM.)

20                  THE CLERK: United States of America versus  
21 Yassin Muhiddin Aref and Mohammed Mosharref Hossain,  
22 criminal docket number 04-CR-402.

23                  Could we have appearances for the record,  
24 please.

25                  MR. GRABLE: David Grable with Assistant U.S.

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1 Attorney Gregory West, FBI Special Agents Tim Coll and  
2 Laurie Youngblood, appearing on behalf of the United States.  
3 Good afternoon, your Honor.

4 THE COURT: Good afternoon.

5 MR. KINDLON: Terence Kindlon, 74 Chapel  
6 Street, Albany, New York, appearing on behalf of Yassin  
7 Aref. Good afternoon, your Honor.

8 THE COURT: Good afternoon.

9 MR. LUIBRAND: Good afternoon, Judge. Kevin  
10 Luibrand, for Mohammed Mosharref Hossain, from Tobin &  
11 Dempf, 33 Elk Street, Albany, New York.

12 THE COURT: Good afternoon.

13 Before we commence with the arraignment, Mr.  
14 Kindlon, it's my understanding that your client is able and  
15 willing to proceed without an interpreter today; is that  
16 correct?

17 MR. KINDLON: I've discussed this with him at  
18 some length. His English is good enough for him to  
19 understand what's going on. He does sometimes, when under  
20 pressure, not understand things as well as somebody who grew  
21 up in New Jersey might, but he is able to understand just  
22 about anything. And if there's any problem, I would advise  
23 the Court and perhaps stop and go over it again.

24 THE COURT: That's fine. And if you would,  
25 if you haven't already, advise your client of that fact.

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1 Please interrupt if he needs additional time and needs to  
2 consult about anything else.

3 MR. KINDLON: Yes, thank you, Judge, we've  
4 discussed that.

5 THE COURT: Thank you.

6 Mr. Hossain, it's my understanding that  
7 you -- you may remain seated, Mr. Hossain, as long as you  
8 can see me over the monitor.

9 DEFENDANT HOSSAIN: I can see you.

10 THE COURT: Mr. Hossain, it's my  
11 understanding that you wish now to apply for the appointment  
12 of counsel, is that correct?

13 DEFENDANT HOSSAIN: Yes, sir.

14 THE COURT: I have the financial affidavit  
15 that you completed last week. Did you sign that affidavit  
16 at the bottom?

17 (Pause.)

18 THE COURT: Would you like to see it?

19 DEFENDANT HOSSAIN: Yes, your Honor.

20 THE COURT: Is that your signature at the  
21 bottom?

22 DEFENDANT HOSSAIN: Yes, your Honor.

23 THE COURT: Is the information you provided  
24 true and accurate to the best of your belief?

25 DEFENDANT HOSSAIN: It is, to my knowledge.

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1 THE COURT: Now, Mr. Hossain, based on your  
2 financial affidavit, it appears that you, from what you say  
3 you derive, about \$10,000 a month in income from your  
4 business and that you have expenses against that business of  
5 \$9,000, or a little over, which would be close to what we  
6 would call a wash. But it also appears -- which if that  
7 were the only income and costs that you had against income,  
8 you would clearly qualify for the appointment of counsel.  
9 But it also appears from your affidavit that you own four  
10 rental properties from which you receive rental income and  
11 which you own free and clear of any liens or encumbrances;  
12 is that correct?

DEFENDANT HOSSAIN: Yes, your Honor.

14 THE COURT: All right. Based on what you  
15 assess the value of those properties to be, it does appear  
16 that you have assets from which to pay an attorney. So  
17 here's what I'm proposing. I will appoint an attorney for  
18 you, and it will be Mr. Luibrand. I would require, however,  
19 that you agree to forfeit property which -- and the  
20 agreement will be held by the Court until the conclusion of  
21 the case, at which time that property would be used to  
22 reimburse the Government for the costs of the attorney that  
23 is assigned to represent you. I do this because it appears  
24 from your affidavit that you do have assets which could be  
25 used to defray the cost of an attorney. Do you understand

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1 that?

2 DEFENDANT HOSSAIN: Yes, your Honor.

3 THE COURT: Do you have any questions about  
4 it?

5 DEFENDANT HOSSAIN: No, your Honor.

6 THE COURT: Are you agreeable to doing that?

7 DEFENDANT HOSSAIN: Yes, your Honor.

8 THE COURT: All right. I'm going to present  
9 to you now an agreement to forfeit property and I'm going to  
10 require that you put on that forfeiture two of the  
11 properties that you own, which I believe would be sufficient  
12 to reimburse the Government for any costs of the attorney  
13 that's appointed to represent you. If you have any  
14 questions about it, you can consult with Mr. Luibrand who is  
15 here with you and who is appointed to represent you.

16 Mr. Hossain, I take it you are the only named  
17 owner on those properties? Is your wife on the deed?

18 DEFENDANT HOSSAIN: No, myself. I provide  
19 years and years, we call it my children's fund, and those  
20 money I put it into a --

21 THE COURT: I'm just concerned with whose  
22 names are on the deed.

23 DEFENDANT HOSSAIN: Mine.

24 THE COURT: Then it only requires your  
25 signature.

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1 (Pause.)

2 THE COURT: Since the initial appearances in  
3 this case, I believe an Indictment has been returned for  
4 purposes of arraignment. Mr. Grable or Mr. West, can you  
5 summarize the charges and the maximum penalties.

6 MR. GRABLE: Yes. Thank you, your Honor. On  
7 Friday of last week a grand jury handed up a 19 count  
8 Indictment, a copy of which has been provided to both  
9 defendants, charging them with multiple counts of money  
10 laundering and multiple counts of attempted and conspiracy  
11 to conceal what they believe was the source of material  
12 support for a specified terrorism offense.

13 Summarizing the Indictment, Count 1 is a  
14 money laundering conspiracy count that charges both Yassin  
15 Muhiddin Aref and Mohammed Mosharref Hossain with conspiring  
16 to commit the laundering money offense. Counts 2 through 11  
17 are substantive money laundering counts. All of those,  
18 Counts 1 through 11, carry a maximum term of incarceration  
19 of 20 years, a maximum fine of \$250,000, a maximum term of  
20 supervised release of three years, and a mandatory special  
21 assessment upon conviction of \$100.

22 Count 12 of the Indictment is a conspiracy to  
23 commit an offense under 18 USC Section 2339A. That is the  
24 provision that prohibits conspiring or attempting to conceal  
25 the source of material support or resources for a specified

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1 offense. The specified offense in this case is the unlawful  
2 use of a weapon of mass destruction in violation of 18  
3 United States Code Section 2332(a). Count 12 is a  
4 conspiracy count, and Counts 13 through 19 are substantive  
5 counts that follow up on that which occurred during the  
6 course of the conspiracy. The maximum penalty for all of  
7 those 2339A counts are a maximum term of imprisonment of 20  
8 years, a \$250,000 fine, a maximum term of supervised release  
9 of three years and a mandatory special assessment upon  
10 conviction for each count of \$100.

11 THE COURT: Thank you, Mr. Grable.

12 Mr. Kindlon, have you received a copy of the  
13 Indictment?

14 MR. KINDLON: Yes, sir.

15 THE COURT: Have you had adequate time to  
16 discuss the case with Mr. Aref for purposes of arraignment?

17 MR. KINDLON: I have, your Honor.

18 THE COURT: Does Mr. Aref wish the Indictment  
19 read to him or does he waive the reading?

20 MR. KINDLON: He waives the reading.

21 THE COURT: And how does he plead?

22 MR. KINDLON: Not guilty.

23 THE COURT: Mr. Luibrand, have you received a  
24 copy of the Indictment?

25 MR. LUIBRAND: Yes, your Honor.

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1                   THE COURT: Have you had adequate time,  
2 adequate opportunity to discuss the case with Mr. Hossain  
3 for purposes of arraignment?

4                   MR. LUIBRAND: Yes, your Honor.

5                   THE COURT: Does Mr. Hossain wish the  
6 Indictment read to him or does he waive the reading?

7                   MR. LUIBRAND: Your Honor, we waive the  
8 reading.

9                   THE COURT: And how does he plead?

10                  MR. LUIBRAND: Not guilty, your Honor.

11                  THE COURT: A not guilty plea has been placed  
12 on behalf of Mr. Aref and Mr. Hossain. A scheduling order  
13 has been entered and is being provided to counsel at this  
14 time setting forth the schedule for the progression of the  
15 case.

16                  Now, prior to today's proceeding, a matter  
17 was brought to my attention which -- regarding Mr. Aref  
18 which requires a further hearing. Mr. Kindlon, I understand  
19 you are going to be gone for a period of time. During what  
20 week would you be available?

21                  MR. KINDLON: I'll be gone as of this  
22 Thursday and for all of next week, your Honor, returning the  
23 next -- the following Monday, and I don't know what the date  
24 is, I don't have a calendar.

25                  THE COURT: Looks like August 23, 24.

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1 MR. KINDLON: August 24 is perfect, Judge.

2 THE COURT: August 24 at 2 PM. Is that  
3 agreeable with the Government?

4 MR. GRABLE: Yes, your Honor. Thank you.

5 THE COURT: All right. 2 PM, August 24.

6 Now, matter also on for today is the  
7 Government's motion for detention as to both Mr. Aref and  
8 Mr. Hossain. Is the Government ready to proceed?

9 MR. GRABLE: Yes, we are, your Honor.

10 THE COURT: Mr. Kindlon, are you ready to  
11 proceed?

12 MR. KINDLON: Yes, sir.

13 THE COURT: Mr. Luibrand?

14 MR. LUIBRAND: Could I have a moment, your  
15 Honor?

16 THE COURT: Yes.

17 (Pause.)

18 MR. LUIBRAND: Yes, your Honor, we're ready.

19 THE COURT: All right. Thank you. Mr.  
20 Grable, I'll hear from the Government first.

21 MR. GRABLE: Thank you, your Honor. I'm  
22 holding in my hand a pretrial services report which was  
23 prepared following the interview with each of these  
24 defendants, and the recommendation contained in both of the  
25 pretrial services report is that both defendants be detained

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1 pending trial because there is no condition or combination  
2 of conditions that would reasonably ensure the defendants'  
3 appearance in court or the safety of the community. The  
4 Government joins in these recommendations and asks the Court  
5 to detain both of these defendants on both of those grounds;  
6 that is, that their release would pose a risk of danger to  
7 the community and a serious risk of flight.

8 As the Court is well aware, there are four  
9 factors that it needs to consider in determining whether to  
10 release or detain a defendant pending trial. Those factors  
11 are set forth in 18 USC Section 3142(g). The first two  
12 factors are really linked in the sense that they deal with  
13 the type of case and the strength of the evidence; the first  
14 factor being the nature and circumstances of the offense  
15 charged, the second factor being the weight of the evidence.  
16 We submit, beginning with those two factors, that as to both  
17 of these defendants, they strongly favor detention in this  
18 case. The Court is familiar with the affidavits that have  
19 been submitted in support of the complaint that was issued  
20 and search warrants that were issued in this case. I'm  
21 going to try not to recite every detail contained in those  
22 affidavits, but we would ask that the Court incorporate  
23 those by reference when considering the nature of the case  
24 and the strength of the evidence in this case.

25 As your Honor is well aware, this case

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1 involves circumstances in which these defendants laundered  
2 what they believed, were led to believe were the proceeds of  
3 a missile sale to terrorists in New York City and that these  
4 terrorists in New York City intended to use the missile for  
5 a particular purpose; that is, an attack on a Government  
6 official.

7 THE COURT: Do any of the charges in this  
8 case raise the presumption?

9 MR. GRABLE: One of the charges in this case,  
10 2339A, is a crime of violence, your Honor, under the Bail  
11 Reform Act.

12 THE COURT: Which count is that?

13 MR. GRABLE: That's Count 12, the conspiracy  
14 to commit, 2339A, and Counts 13 through 19, the substantive  
15 2339A counts.

16 So you've got, you've got a crime of  
17 violence, crimes in this case, and aside from that, Judge,  
18 you have recurring criminal conduct, multiple transactions,  
19 meetings and discussions, the vast majority of which were  
20 captured on audio and videotape. We submit that speaks  
21 strongly to the weight of the evidence. The complaint sets  
22 forth -- the affidavit attached to the complaint sets forth  
23 the detail, the nature of those conversations.

24 In general, going through sort of a summary  
25 chronology, sometime in the summer of 2003 a cooperating

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1 witness struck up a relationship with the defendant Hossain.  
2 Soon after striking up that relationship, the defendant  
3 Hossain asked the cooperating witness to assist Hossain's  
4 brother in acquiring a fraudulent document. The cooperating  
5 witness performed the service and got the brother the  
6 fraudulently obtained document. During the course of those  
7 meetings about that transaction, there was discussion about  
8 religion, politics and other issues, there was discussion  
9 about jihad, and the question was raised and discussed as to  
10 whether money could be made through jihad. During the  
11 course of these conversations --

12 THE COURT: What definition of jihad does the  
13 Government assume here?

14 MR. GRABLE: There were two definitions as  
15 set forth in the complaint, two definitions or two forms of  
16 jihad that were discussed. There was this outer jihad that  
17 was discussed; it was essentially phrased as a -- well, at  
18 least to include the violent terrorist type attacks that I  
19 think people see and hear about on the news. And there was  
20 also the in -- an inner jihad that was discussed, which  
21 talks about essentially, I think, controlling one's own  
22 desires and other matters like that. As set forth in the  
23 complaint affidavit, defendant Hossain during this time  
24 period opined that now was not the time for the violent  
25 outer jihad, but it was the time for the inner jihad. And

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1 that's all set forth in our complaint affidavit.

2                   But in the discussion of making money through  
3 jihad and right around the same time the defendant Hossain  
4 asked the cooperating witness for a loan, the opportunity  
5 was opened up for the sting operation to begin. And as set  
6 forth in the complaint affidavit on November 1 -- on  
7 November 20, 2003, the cooperating witness showed defendant  
8 Hossain a shoulder-fired missile. He had told defendant  
9 Hossain in sum and substance --

10                  THE COURT: Showed him the missile itself or  
11 a photograph of the missile?

12                  MR. GRABLE: He actually showed him the  
13 missile. With the Court's permission, I provided a copy to  
14 Mr. Kindlon already, I'm handing a copy to Mr. Luibrand  
15 right now, what's been marked as Government's Exhibit 1, I  
16 would like to offer this for purposes of the detention  
17 hearing.

18                  THE COURT: It will be accepted for that  
19 purpose.

20                  MR. GRABLE: Government Exhibit 1 depicts a  
21 November 20, 2003 meeting that was captured on hidden video  
22 in which the cooperating witness is displaying to defendant  
23 Hossain the shoulder-fired missile.

24                  During the course of that meeting, the  
25 cooperating witness explained to defendant Hossain in sum

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1 and substance that he imports this missile and other types  
2 of equipment like that from China, that he provides it to  
3 mujahid brothers down in New York City and he uses it for  
4 hitting airplanes.

5 Sometime following that meeting, but before  
6 December 3, 2003, Hossain reiterated his request that the CI  
7 provide him with a loan. On December 3, 2003, the  
8 cooperating witness linked up that request to this missile  
9 and proposed to defendant Hossain that he assist the  
10 cooperating witness in laundering the \$50,000 proceeds from  
11 the importation and shipment of that missile down to New  
12 York City. The cooperating witness in a recorded  
13 conversation, audio recorded only, not video recorded,  
14 described again how he brought these -- brought this missile  
15 into the United States to go down to New York City, to  
16 jihadis in New York City and -- I believe the term that he  
17 used in that conversation was jihadis -- and proposed that  
18 Hossain take the \$50,000 cash proceeds from this missile,  
19 pay back the cooperating witness in monthly \$2,000 payments  
20 on checks that would make it appear as though the  
21 cooperating witness had worked for Hossain.

22 In a meeting a couple of days later, on  
23 December 5, 2003, the defendant Hossain in the course of a  
24 conversation about having this transaction be performed in  
25 accordance with the laws of Allah, the defendant Hossain

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1       represented that a witness be part of the transaction, and  
2       after the cooperating witness eliminated certain ethnic  
3       groups from the pool of individuals that he wished to serve  
4       as a witness in this case, the defendant Hossain recommended  
5       co-defendant Yassin Aref and said that Yassin Aref could be  
6       a witness and guarantor in this transaction.

7                  After that December 5<sup>th</sup> meeting but before  
8       the December 10<sup>th</sup> meeting, Hossain told the cooperating  
9       witness in sum and substance that he had had some  
10      conversation but just some minor conversation with Aref  
11      about the laundering scheme and that on December 10<sup>th</sup> in a  
12      recorded conversation, the cooperating witness met with the  
13      defendant Hossain and defendant Aref and talked about this  
14      proposal, about this laundering proposal, during which time  
15      the defendant Aref recommended that the parties create a  
16      receipt to further follow the laws of Allah, a receipt of  
17      each transaction that was performed. And although the  
18      cooperating witness initially resisted, saying, amongst  
19      other things, that he didn't -- or suggesting amongst other  
20      things that he didn't want people to know where this money  
21      came from, he eventually acquiesced and agreed to have  
22      receipts generated. And in a minute I'll get to where the  
23      receipts come in.

24                  Fast-forwarding approximately a month to  
25       January 2 of 2004, when this scheme gets consummated, on

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1       January 2, 2004, the cooperating witness met with Yassin  
2       Aref and Mohammed Mosharref Hossain in his office. And with  
3       the Court's permission, I would like to hand up what's been  
4       marked as Government's Exhibit 2 and we would like to offer  
5       this for purposes of the hearing. A copy has been provided  
6       to Mr. Kindlon, and I'm providing a copy to Mr. Luibrand.  
7       Government's Exhibit 2 is a still photo of the videotape of  
8       that January 2, 2004 meeting in which the defendant Hossain,  
9       who's pictured in the white cap, and defendant Aref, who's  
10      pictured without a cap but with his -- I think it's pretty  
11      clear from the picture it's defendant Aref sitting on one  
12      side of the desk and the cooperating witness standing on the  
13      other side of the desk and the cooperating witness holding  
14      in his hands the trigger mechanism for this surface to air  
15      missile. During this meeting the cooperating witness again  
16      went over the terms of the laundering deal, talked about  
17      this piece of equipment, this trigger mechanism needing to  
18      go down to New York City, and that when it did, he would get  
19      the remaining \$45,000 from the \$50,000 he was getting for  
20      bringing this piece of equipment in. And they essentially  
21      consummated the laundering deal in the sense that the  
22      cooperating witness provided -- first attempted to provide  
23      the defendant Hossain but being directed to provide to  
24      defendant Aref \$5,000 cash. He provided the cash, on the  
25      videotape, Aref counts out the cash and then hands it to

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1 Hossain. Following on, a receipt is generated in which all  
2 three of the individuals signed the receipt simply talking  
3 about the money owed from one person to another. And  
4 Hossain makes a check payable or at least says that he will  
5 make a check payable to the cooperating witness' business.  
6 The cooperating witness gives him a card so that Hossain can  
7 see the business name that the check is supposed to be made  
8 payable to.

9 THE COURT: Does the use of receipts in an  
10 alleged criminal conspiracy strike you as unusual and even  
11 bizarre?

12 MR. GRABLE: It does not, your Honor,  
13 especially since it appears that the understanding was --  
14 well, number one, that that's the way to do it according to  
15 the laws of Allah and that's the way transactions are done  
16 in this culture. And number two, there was information or  
17 at least the conversations suggest that the receipts weren't  
18 going to be simply kept anywhere, but they would be kept by  
19 Aref in a place -- not necessarily a secret place, but a  
20 place that he would have secure and would be kept by the  
21 cooperating witness. These aren't receipts that would be  
22 given just to anybody; they would be kept by the  
23 participants in this transaction. And the conversations  
24 bear out the purpose of the receipts; that is, to serve as a  
25 guarantee in the event, for example, the CW dies or

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1 something, then the guarantor, in this case Aref, can help  
2 to collect the money on the CW's family's behalf. So this  
3 January 2 transaction is where the scheme is actually  
4 consummated, money is accepted first by Aref and he ensures  
5 all of it is there, it's given to Hossain, and then later in  
6 the day the cooperating witness, as set forth in the  
7 affidavit, meets with Aref and picks up a copy of the check,  
8 \$2,000 check payable to the cooperator's business and picks  
9 up a copy of the receipt. Aref has taken the receipt,  
10 generated a copy and given one copy to the cooperating  
11 witness.

12 Following on, after that January 2 meeting,  
13 there are a number of additional meetings in which cash is  
14 provided to both defendants and they follow the same  
15 pattern. And they're all captured on videotape, save one.  
16 And those are transactions, again, in which the cooperating  
17 witness provides the cash to Aref, who counts the cash and  
18 ensures that it's all there, gives it to Hossain, a receipt  
19 is generated and a check is provided to the cooperating  
20 witness, representing that it was payable to his business,  
21 again, in line with the scheme, goal to demonstrate or at  
22 least provide the indication and cover that the cooperating  
23 witness had provided legitimate services and work for  
24 Hossain.

25 As the case progressed, the defendants

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1 learned more about the particular use to which the missile  
2 will be put. As the case progressed, the cooperating  
3 witness had conversations with Hossain alone, with Aref  
4 alone and with the two of them together, in which he  
5 described his affiliation with the group called  
6 Jaish-e-Mohammed or JEM and described how this missile was  
7 being sent down to New York City to be used in a terrorist  
8 attack against a Pakistani government official in  
9 retaliation for the policies of the Pakistani President  
10 Musharraf. And this information was provided to each of the  
11 defendants separately and then provided to both of them  
12 together in a following February 12<sup>th</sup> conversation that  
13 the CW had during a money-passing transaction.

14 The evidence in this case shows that as the  
15 defendants learn more about the particular use to which this  
16 missile would be put, they didn't sever their relationship  
17 with this defendant, they didn't notify law enforcement  
18 about the information that they had learned; they continued  
19 to engage in these transactions and, in fact, the defendant  
20 Hossain asked for additional money after he had learned  
21 about this information, and defendant Aref had conversations  
22 with the cooperating witness about acting secretly, about  
23 keeping quiet, about the particular use to which the missile  
24 would be put because that's how people who are doing that  
25 sort of thing do it.

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1                         As the transactions progress farther along,  
2 later on in the scheme, in the early summer, around June of  
3 2003 -- excuse me -- 2004, Aref actually asked the  
4 cooperating witness to go in on a business proposal in which  
5 he said to the cooperating witness, can I purchase -- or  
6 would you like to go in with me on the purchase of Hossain's  
7 pizza place, and Aref proposed that the cooperating witness  
8 use some of the proceeds that were still in Hossain's  
9 possession and essentially forgive some debt in order to pay  
10 the cooperating witness his share. During the course of  
11 that conversation, which is again recorded, the cooperating  
12 witness represented to Aref that he might be interested in  
13 doing that, that he would have to be a silent partner and,  
14 amongst other things, that once this missile was used down  
15 in New York City, he would have to leave the country for a  
16 couple months because, essentially, I think that the  
17 implication was the heat would be on. And Aref responded in  
18 sum and substance that that wouldn't be a problem.

19                         As the Court is aware, the takedown took  
20 place earlier -- or excuse me -- at some point last week.  
21 During the course of the execution of the search warrant,  
22 receipts were found at the Masjid As Salam mosque where Aref  
23 served as the Imam. Over \$6,000 in cash was found in  
24 Mohammed Mosharref Hossain's residence. Another thousand  
25 dollars cash was found on his person. As the Court is aware

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1 today, we had an arraignment on a 19-count indictment that a  
2 grand jury issued on Friday endorsing essentially, at least  
3 as far as the grand jury could, the strength of the evidence  
4 in this case. And included in the Indictment are some  
5 sentencing allegations in the back portion which essentially  
6 allege certain sentencing factors in the wake of the Blakely  
7 decision, and included in those allegations which the grand  
8 jury endorsed is the allegation that this case involves  
9 crimes that involved or were intended to promote what's  
10 called a federal crime of terrorism. As your Honor may be  
11 aware, that enhancement, if found guilty by a jury, would  
12 make this case an offense level 36, a criminal history  
13 category of VI, yielding a guideline range of 210 to 262  
14 months.

15 We certainly submit that those penalties  
16 create a tremendous incentive to flee in this case. And all  
17 of the information I've described, again, is captured on  
18 tape. We submit that because of the nature of the case, the  
19 evidence is very strong, and the characteristics of the case  
20 and the weight of the evidence all strongly favor detention  
21 in this case.

22 THE COURT: Let's assume for the sake of  
23 argument that certainly given the audio and videotapes that  
24 the Government will have no difficulty proving what is  
25 alleged in the complaint, but a reading of the complaint

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1 also suggests certain defenses, including entrapment. What,  
2 if any, evidence does the Government have of the  
3 predisposition of either defendant?

4 MR. GRABLE: Your Honor, the Government has  
5 evidence of -- or at least we would introduce evidence and  
6 say that it shows predisposition on a number of different  
7 fronts.

8 As the Court is well aware, and was included  
9 in the search warrant application for the mosque, Aref's  
10 house and Hossain's residence, as to defendant Aref in  
11 particular, his name in June of 2003, we've been informed by  
12 the Department of Defense, was recovered and found in a  
13 notebook following a raid on a terrorist camp in -- near  
14 Rawa, Iraq. Included in that notebook were the names of  
15 various individuals. The notebook was found along with  
16 other pocket litter, rocket propelled grenades, from my  
17 understanding, shoulder fired missiles, and small arms and  
18 weapons manuals. And in that notebook was included an entry  
19 for the name Yassin Aref; it had a Leonard Place, Albany,  
20 New York street address, with a specific number which was  
21 Aref's address for his early portion of his time here in the  
22 United States. It had a telephone number which was Aref's  
23 telephone number for his early portion of his time in the  
24 United States. And it had underneath it a title, Commander  
25 Yassin, New York, United States.

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1                   THE COURT: In what language was the word  
2 "commander" written?

3                   MR. GRABLE: It's my understanding that it  
4 was an Arabic language document.

5                   THE COURT: Is it subject to any other  
6 interpretation other than commander?

7                   MR. GRABLE: I don't know the answer to that,  
8 your Honor. We're relying on a translation provided to us  
9 by the Department of the Defense.

10                  When Aref was arrested and interviewed by law  
11 enforcement following his arrest, he did not -- well, first  
12 of all, he told law enforcement that he was never in the  
13 military and he had no explanation for it, and he offered no  
14 explanation as to why his name was found in this book  
15 following this attack on the terrorist camp. We certainly  
16 submit that that information, given the nature of the scheme  
17 in this case, will be very strong evidence of predisposition  
18 as to defendant Aref.

19                  There is additional evidence that we would  
20 offer to a jury and argue to a jury to show predisposition  
21 as to both defendant Aref and defendant Hossain, including,  
22 amongst other things, the readiness in which they accept the  
23 proposition to launder, which the Second Circuit has said,  
24 accepting a criminal proposition without any hesitation is  
25 alone sufficient to show predisposition to support a jury

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1       verdict. We submit that certainly the evidence in this case  
2       will show that these defendants didn't show hesitation when  
3       they knew what was going to happen in this case. And as  
4       they learn more about the particular use to which the  
5       missile would be put, they in fact continued on and  
6       laundered more and more money. In addition to that, we  
7       would argue about the repetitive nature of the conduct, the  
8       number of the transactions, the advice that Aref offered to  
9       the cooperating witness about moving secretly and hiddenly  
10      and other factors as described in the complaint that we  
11      think would show that a reasonable person in this case would  
12      not have acted as these defendants did and accepted this  
13      proposition but, instead, certainly would have run the other  
14      way. We submit that all of that is sufficient to rebut an  
15      entrapment defense in this case.

16                   All of that information bears strongly on the  
17      third factor as well that this Court must consider in this  
18      case, which is the history and characteristics of the person  
19      involved. As the Court is well aware, there's a number of  
20      different subsets of information that it may consider under  
21      that factor. And going first with defendant Aref, he's not  
22      a lawful permanent resident or citizen of the United States.  
23      He has refugee status in the United States. He has  
24      significant ties to foreign countries. He was born and  
25      raised in Iraq as reflected in the pretrial services report

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1 and spent 26 of his 34 years there. He has a number of  
2 family members in Iraq as shown in the PSR, a third brother  
3 in Holland. He spent four years in Syria. During the  
4 execution of the search warrant, searching agents found a  
5 Syrian ID card in his name which was valid through the Year  
6 2007. There are financial resources that we submit  
7 defendant Aref has access to, at least past conduct suggests  
8 he would have access to, that would assist him in fleeing  
9 should he have the opportunity to. There are wire transfers  
10 that are outlined in the search warrant affidavits that  
11 defendant Aref appears to have engaged in. During the  
12 month -- or excuse me -- during the Year 2001, as set forth  
13 in the search warrant application, the defendant Aref,  
14 according to an individual down in Georgia, wired between --  
15 or excuse me -- transferred, not wired, but transferred  
16 between \$15,000 and \$18,000 to Iraq. He also -- and this  
17 occurred as set forth in the affidavit during a time when he  
18 was telling Albany County Department of Social Services that  
19 he was making \$200 a month and that was his sole source of  
20 income. He also wired, as set forth in the search warrant  
21 affidavit, another, I think, \$1,300 to an individual in  
22 Greece. This person, as set forth in the search warrant  
23 affidavit, was arrested six months after the wire transfer  
24 by Greek police in connection with what sounds like a  
25 fraudulent document possession and manufacturing operation.

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1       And I don't have further information on that individual, but  
2 we submit that all of that information indicates that he has  
3 these ties to foreign countries as well as an ability to  
4 marshal resources, it would appear, to flee if given the  
5 opportunity. The camp information that I described already  
6 in response to the entrapment question, we submit, shows  
7 that this defendant presents a danger to the community if  
8 released. That sort of personal history and characteristic  
9 would suggest that his release could pose a danger to the  
10 community.

11                 One of the factors the Court can consider  
12 under this element is the character of the defendant, and we  
13 submit that the investigation and take-down has yielded  
14 evidence suggesting that the Court should have concern about  
15 defendant Aref's character in this case. He was asked  
16 multiple questions during the course of a post-arrest  
17 interview. One of the questions he was asked was whether he  
18 had ever heard of or knew about a group called  
19 Jaish-E-Mohammed, JEM. As the Court will recall, that is  
20 the group that the cooperating witness told Aref on tape  
21 recorded English language conversations and communications,  
22 the CW told Aref that that was the group that he was working  
23 with and that was the group that was essentially behind this  
24 missile importation. Aref told Special Agent Timothy Coll  
25 during the post-arrest interview the other night that he had

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1 never heard of that group, contrary to what he had told the  
2 cooperating witness on the tape recording, which is that he  
3 had heard of the group, that he knew they were on the  
4 Government's list of terrorists group. JEM is, in fact, on  
5 the State Department's list of foreign terrorist  
6 organizations. We submit that's not the type of lie that's  
7 simply a claim by the Government that he defrauded somebody.  
8 It's -- he's on the tape saying it, and he denied it to  
9 Special Agent Coll the other night. We submit that bears on  
10 his character. In a similar vein, he was asked about money  
11 transfers to foreign countries and told interviewing agents  
12 the other night that he sent a total of \$600 to \$700 to  
13 Iraq, when, in fact, at least we submit, as set forth in the  
14 complaint, it appears he sent in one year alone between  
15 \$15,000 and \$18,000 with the help of an individual in  
16 Georgia and other money to Greece and perhaps other money to  
17 other places. He was asked by agents during the course of  
18 his post-arrest interview whether he had ever heard of the  
19 name Lahlo Garan (phonetic) or had ever used or went by that  
20 name. And Special Agent Rudd during the course of that line  
21 of questioning, I believe, wrote down the name for the  
22 translator who was there for -- the translator who was there  
23 to ensure that there was no miscommunication, and Aref  
24 answered no, he had never heard of that name and had never  
25 used that name. In August of 2003, Aref was observed going

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1 into a post office in the Capital District, and we've  
2 reviewed still photos of that date, and these still photos,  
3 approximately five of them, capture Aref walking up to a  
4 certain -- one desk or teller in the post office, obtaining  
5 a money order for a thousand dollars, walking back, doing  
6 what looks like completing an express mail envelope package,  
7 walking up to a different person and mailing that package or  
8 conducting another transaction. We -- the Government has  
9 acquired the money order that was completed by or appears to  
10 have been completed by Aref in that case, along with the  
11 express mail envelope. It appears to have been completed by  
12 him in that case. It was a thousand dollar money order, and  
13 the person who was allegedly sending it was named Lahlo  
14 Garan, the same name that the defendant Aref told Special  
15 Agent Rudd he never heard of, he had never used before. The  
16 address on the money order and the address on the return --  
17 excuse me -- on the envelope that mailed the money order was  
18 the address of the Masjid as-Salam mosque, 278, I believe,  
19 Central Avenue. We submit that, again, this piece of  
20 information provides the Court with evidence showing that  
21 there's reason to have concern about the veracity of the  
22 defendant Aref and his willingness and ability to abide by  
23 any conditions of release.

24 And just to close that up, FBI agents did a  
25 search of a number of different data bases for the name

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1 Lahlo Garan and couldn't find it anywhere. This was back in  
2 August 2003; choice Point, DMV, State Department,  
3 LexisNexis; nowhere, but it appears to be on that money  
4 order in Mr. Aref's handwriting, and Mr. Aref told the  
5 agents he never heard of it before.

6 Finally, bearing on the character of  
7 defendant Aref, the fraud scheme is alleged in this case.  
8 The facts associated with a fraud scheme, the Government  
9 submits Aref engaged in, are alleged in the search warrant  
10 affidavit for the mosque and Aref's residence. The facts  
11 contained in the affidavits describe how Aref, it appears,  
12 hid his income from Albany County Department of Social  
13 Services, both employment income and rental income, in order  
14 to be able to obtain benefits to which it appears he wasn't  
15 entitled. So we submit that also bears on his character.

16 All of those factors and all of those  
17 circumstances take into concert, we submit, show that this  
18 defendant's history, character and other factors strongly  
19 favor detention in this case.

20 Moving on to defendant Hossain's personal  
21 characteristics, we submit that those also --

22 THE COURT: Well, before we do, as to  
23 Mr. Aref, is there any evidence or intelligence upon which  
24 the Government relies which links, other than the notebook  
25 found in northern Iraq, which links Mr. Aref to any

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1       terrorism or foreign organizations?

2                    MR. GRABLE: If I could have a moment, your  
3 Honor.

4                    THE COURT: Yes.

5                    (Pause.)

6                    MR. GRABLE: At this point, your Honor, we're  
7 not offering anything else on that score.

8                    THE COURT: As to Mr. Hossain.

9                    MR. GRABLE: As to Mr. Hossain, the personal  
10 characteristics and history of defendant Hossain also favor  
11 detention in this case, we submit. Although he has many  
12 ties to the United States, he has significant ties to  
13 Bangladesh, his country of origin, and there are various  
14 indicators that he was planning -- just before the take-down  
15 in this case, he was making plans and doing things to  
16 prepare for a trip to Bangladesh with his entire family. On  
17 the day of his arrest, he was heading back up from New York  
18 City and he had in his possession updated passports for  
19 himself, his wife and three of his children, all of which  
20 contained visa -- or excuse me -- stamps in the passport  
21 section which appeared to be essentially a visa substitution  
22 saying that he would not need a visa, neither would any of  
23 the holders of the passports. Passport holders need visas  
24 in order to gain access to Bangladesh. Hossain told the  
25 cooperating witness before the case was taken down that

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1 Hossain's mother-in-law and two of his other children  
2 intended to travel to Bangladesh on August 17<sup>th</sup>, and  
3 during the execution of the search warrant one-way airline  
4 tickets for a trip to Bangladesh were found. Hossain told  
5 the cooperating witness that he was going to go back to  
6 Bangladesh as soon as he could or as soon as he sold his  
7 pizza parlor, and if he couldn't sell it, he would simply  
8 close the pizza parlor and leave. In addition to that, I  
9 think the search warrant and again the complaint  
10 affidavits --

11 THE COURT: Is it your interpretation that he  
12 intended to leave the United States for good?

13 MR. GRABLE: I don't have a clear picture of  
14 that, your Honor. I do know he has some real estate  
15 properties here, but we do submit that closing up his pizza  
16 business at least would -- you know, could support an  
17 inference that he was intending to leave for a while. And  
18 we certainly submit whether he was intending to leave for a  
19 while or not, this information shows he has an inclination  
20 and is ready, willing and able to leave the country; and now  
21 that he's charged with a crime carrying these types of  
22 penalties, he would take advantage of that if he could.

23 In addition, your Honor, we've spoken with --  
24 or we've determined that it appears that the United States  
25 has no extradition treaty with Bangladesh, so that in the

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1 event that the defendant were released and did flee, there  
2 would be -- it appears there would be little chance of ever  
3 having him face these charges in a court in this country.

4 There's some other past conduct of defendant  
5 Hossain which is set forth in the complaint, the document  
6 fraud that was the sort of beginning of the relationship  
7 between the cooperating witness and defendant Hossain in  
8 this case. Hossain admits to tax evasion during the course  
9 of this scheme, during the early portions of it in December,  
10 January 2003, 2004. In recorded conversations Hossain talks  
11 about not recording approximately \$500 to \$800 worth of cash  
12 proceeds from his pizza business and not reporting them so  
13 that he didn't have to pay taxes on them -- excuse me --  
14 taxes on those funds. We submit that that at least to some  
15 degree bears on the nature and characteristics of the person  
16 involved.

17 And, again, as is the case with Aref, we  
18 submit that the post-arrest interview of defendant Hossain  
19 yielded some information that this Court should consider  
20 when addressing this detention question. During recorded  
21 conversations during the course of this scheme, the  
22 defendant Hossain told the cooperating witness that he was a  
23 member of a group called Jamaat-e-Islami, and I think it's  
24 identified in the complaint affidavit and search warrant  
25 affidavit by the letters JEI. He even went so far as to

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1 tell the cooperating witness that he was a person of  
2 authority or at least somewhat of a higher-up in the group,  
3 and I've heard that term referred to as a Nasam or Naseem,  
4 but in any event, Hossain represented to the cooperating  
5 witness on tape membership in this group and a particular  
6 position in this group. When interviewed by Special Agent  
7 Coll the night of the arrest and asked about JEI, Hossain  
8 denied that he was a member of JEI, and we submit that, once  
9 again, this isn't a case of interpretation of actions or  
10 deeds; you've got a recorded conversation in which he  
11 represents one thing and a simple flat out question in an  
12 interview where he represents exactly the opposite.

13 THE COURT: Maybe you said this earlier.  
14 What's the significance of JEI?

15 MR. GRABLE: JEI is -- it's a group that  
16 public -- well, in the course of the case here, JEI comes  
17 up, it's my recollection, when the cooperating witness is  
18 having a conversation with Hossain somewhere, I guess you  
19 would say, in the middle of the scheme or so, February or  
20 so, or maybe even March, but I think it's probably February,  
21 and the cooperating witness makes a comment about the  
22 martyr's blood being spilled, and Hossain says in response,  
23 amongst other things, I told you before -- I believe he said  
24 I told you before, I told you I'm a member of the  
25 Jamaat-e-Islami and my wife is a member as well; and then

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1 later in a conversation he says he's the Naseem. It's  
2 alleged in the complaint affidavit that JEI, by public  
3 source information, is an Islamic fundamentalist political  
4 party in Pakistani with chapters in Bangladesh. That's  
5 what's alleged in the complaint affidavit. The Government  
6 has seen a various range of, I think, public source  
7 information; some public source information may link this  
8 group with extremists, some public source information may  
9 say they're a political party. The Government submits  
10 though that perhaps most importantly for your Honor's  
11 decision is the fact that the defendant obviously saw it not  
12 to his advantage to admit what he had told the cooperating  
13 witness before and lied about that during the interview.

14                   Real brief issue, your Honor, on Hossain's  
15 character, he told Probation in the presentence interview  
16 that he owned four properties; West Street, Alexander  
17 Street, Elk Street, and Clinton Avenue. The pretrial  
18 services report on page 2 indicates that a Westlaw check  
19 confirms that he owns the Alexander Street and West Street  
20 properties, but has nothing for Elk Street, it looks like,  
21 or for Clinton Street. And checks that the Government  
22 performed with Albany County indicate that he's not the  
23 owner of the Elk Street or the Clinton Avenue properties.

24                   THE COURT: I was advised today by pretrial,  
25 it may not be unusual for a delay to occur in transfer of

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1 title at an auction hearing.

2 MR. GRABLE: Okay. We were wondering that as  
3 well, your Honor, but that's another piece of information  
4 that we had.

5 The last factor the Court has to consider is  
6 the nature and seriousness of the danger posed by the  
7 defendants, and we certainly submit that this factor in  
8 particular with defendant Aref strongly favors detention.  
9 Here, you have an individual whose name was recovered from  
10 an address book following a raid in a terrorist training  
11 camp -- or excuse me -- a terrorist camp in northern Iraq in  
12 June of 2003, who appears to have been willing to serve as a  
13 witness and guarantor and participant in a money laundering  
14 sting transaction in which he understood that a missile was  
15 being sent down to New York City to commit a terrorist  
16 attack. We submit that that type of individual poses a risk  
17 to the community in part and in particular because he has  
18 now been identified in terms of what the investigation has  
19 revealed about him.

20 We submit that the nature of the crime in  
21 this case also demonstrates that Hossain, particularly  
22 because of his willingness to commit this offense, is a  
23 danger to the community.

24 And for all of those reasons, we ask that the  
25 Court detain both of these defendants pending trial.

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1                   THE COURT: As to Mr. Hossain, I'll ask you  
2 the same as to Mr. Aref, other than the circumstances of  
3 this case and what you previously referred to about the  
4 membership in a political or other kind of party, is there  
5 any evidence or intelligence upon which the Government  
6 wishes to rely to establish any ties of Mr. Hossain to any  
7 terrorist or foreign organizations?

8                   MR. GRABLE: No, there are not.

9                   THE COURT: Thank you.

10                  MR. GRABLE: We would point out defendant  
11 Hossain is the one who recommended Aref as a guarantor in  
12 this transaction and Aref has that connection to the camp.

13                  THE COURT: Thank you.

14                  MR. GRABLE: Thanks.

15                  THE COURT: Mr. Kindlon.

16                  MR. KINDLON: Thank you very much, your  
17 Honor. May it please the Court. Mr. Grable. And Mr. Aref.  
18 And Mr. Luibrand.

19                  Judge, in listening to what was concededly a  
20 brilliant presentation by the Assistant U.S. Attorney, I  
21 must admit that I had the feeling I had gone through the  
22 looking glass or fallen down the rabbit hole, because what  
23 he's describing is, we must remember at all times, play  
24 acting that was performed by a governmental informant that  
25 was done very convincingly and clearly in an effort to

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1 entrap two individuals into the appearance of criminal  
2 conduct.

3 Now, 3142 does set forth the factors that  
4 need to be taken into account when the Court is considering  
5 the question of whether or not a person accused should be  
6 released pending trial either on bond or on conditions. And  
7 I would submit, your Honor, that an examination of those  
8 factors in this case strongly urges the conclusion that my  
9 client Yassin Aref poses no risk of flight and is no danger  
10 to the community.

11 Now, let me just talk briefly about the  
12 nature and the circumstances of the offense. A person in a  
13 much higher pay grade than mine, James Comey, who's second  
14 in command at the Justice Department, has unequivocally  
15 stated that this is not the case of the century, and when  
16 you take a magnifying glass and hold it over this Indictment  
17 and think about the words and the content that it contains,  
18 that's the only conclusion you can draw. And rather than go  
19 through the search warrant application paragraph by  
20 paragraph or the Indictment paragraph by paragraph, let me  
21 just summarize this as far as my client Mr. Aref is  
22 concerned.

23 This man, Judge, this 34 year old father of  
24 three, sitting here -- that's okay, sit down -- he's accused  
25 of money laundering, and as part of that money laundering,

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1 one of the things that's held forth as evidence of this  
2 complicity of money laundering is the fact that he gave  
3 receipts in triplicate. What kind of a money launderer  
4 gives receipts? Any superficial knowledge of how Muslim men  
5 conduct financial transactions with each other tells us  
6 that, first, when money is borrowed or lent, interest is not  
7 to be charged. And secondly, these, these folks, unlike the  
8 Government, they don't -- they can't do Westlaw searches and  
9 Lexis searches. They're still in the pencil and paper era.  
10 What they do is bring a witness in and request a witness to  
11 come in and say please watch this transaction and make a  
12 record of it, so that if I die, my son will get the money  
13 that I'm owed. Because they can't go to Surrogate's Court,  
14 they don't have one in their culture, and they haven't  
15 really fully acclimated to ours yet.

16 Also, in this money laundering scheme that my  
17 client has been accused of participating in, it's very  
18 significant, the Government never says he made a dime.  
19 Doesn't make a nickel. Doesn't make a penny. And in sum  
20 and in substance, your Honor, clearly what we're dealing  
21 with here is a situation in which my client, Imam Aref, a  
22 holy man, fulfills a role of nothing more than what we call  
23 a notary public. He comes in, he's somebody you can trust,  
24 he's somebody who's got the ability to look and to perceive  
25 and to confirm these facts and to write them down, which is

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1 something else that's done in their tradition, and to give  
2 everybody, everybody a receipt so that it's unequivocally  
3 established that the money which was borrowed and lent was  
4 involved in that -- in those transactions.

5 As to the weapons offense, Mr. Grable has  
6 given these photographs, and my clients says to me, never I  
7 saw this tube, this weapon, which is set forth in Government  
8 Exhibit 2. And there's no claim that he did. There's no  
9 claim that he did. And also he says, and again I quote him,  
10 never I saw this thing, which I perceive to be a triggering  
11 mechanism for a RPG or a SAM missile; it looks like the back  
12 end of a 45 caliber pistol handle and the front end is a  
13 pelican beak; I don't know how better to describe it; that's  
14 Government Exhibit 4. "Never I saw that" confirms my --  
15 okay, okay, calm down -- Judge, it's really critically  
16 important to remember, your Honor, when dealing with  
17 circumstances of the offense charged here that the offense  
18 charged here arises out of a and rests exclusively on a  
19 foundation of lies and deceit engineered by the Government  
20 and recorded through what we're told as much as a two-year  
21 intensive FBI investigation. And if this is the best they  
22 can do, then we know that Mr. Comey was quite correct when  
23 he said this is not the case of the century. In fact, they  
24 may not even be the case of the weekend. There's just not  
25 anything to it of any real substance.

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1                   Now, I think that also covers the weight of  
2 the evidence.

3                   THE COURT: Well, before you get off the  
4 weight of the evidence, Mr. Kindlon, do you care to comment  
5 on the statement, this was not a sting operation involving a  
6 trip to Disneyland or a pound of cocaine, it was a surface  
7 to air missile to be used to assassinate somebody in New  
8 York City?

9                   MR. KINDLON: My client never heard anything  
10 of that sort, your Honor. And the Court, by that question,  
11 raises a very good point, because if, if the confidential  
12 informant came into my client's life and said that he was  
13 engaged in a drug transaction, would my client be charged  
14 with a drug offense? If he was to say he was engaged in a  
15 bank robbery, would my client be charged with a bank  
16 robbery? This is a fictitious, utterly fictitious story  
17 which was made up in an effort to entrap my client into some  
18 sort of criminal conduct.

19                  And, your Honor, I submit that at this  
20 juncture, while entrapment is an attractive word to use in  
21 defense, I submit that my client never even engaged in any  
22 activity that could be called in any objective fashion  
23 criminal. So, accordingly, if you don't engage in any  
24 criminal activity, you don't need the defense of entrapment  
25 to show your lack of guilt.

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1                   The weight of the evidence in this case is  
2 such that when it's fully run out in front of a jury, I  
3 respectfully submit the charge will be rejected out of hand.

4                   As to my client's personal characteristics, I  
5 think -- I submit that they're terribly significant, your  
6 Honor. Yassin Aref has no prior criminal history. None.  
7 He is married. His wife has some health problems. I think  
8 it would be fair to say his wife has some fairly significant  
9 health problems, which, of course, is very significant in  
10 light of the fact that they are the parents of three young  
11 children between the ages of 5 and 9, three young children  
12 who, like all other young children in America, are probably  
13 worried about having to go back, be back to school in three  
14 weeks, probably worried about the fact that summer vacation  
15 is almost over, and probably need to get ready for the  
16 coming school year. And, obviously, they are gonna have a  
17 much harder time if their father is locked up on these  
18 charges.

19                  My client's home is in this country. He is  
20 here -- Mr. Grable said not lawfully, and I respectfully  
21 disagree with that. My client is here as a refugee from  
22 Iraq. And he fled Iraq, where he lived in that part of Iraq  
23 called Kurdistan back in about 1995, and he fled to Syria  
24 where he married and he and his wife brought into this world  
25 the three children of whom they are the parents. He's an

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1 educated man, your Honor. He has studied history, he  
2 studied comparative religion in college. I had the  
3 opportunity -- I say this as an officer of the Court -- to  
4 have extended conservations with my client. I find him to  
5 be -- and I think the Court should be aware of this -- a  
6 sensitive, intelligent, thoughtful, philosophical and deeply  
7 devout individual.

8 Again, in this connection I have to get back  
9 to the fact that these charges are based on a concocted  
10 story. And my client's participation in the events that  
11 arose as a consequence of that concoction are really limited  
12 to being nothing more than a notary public type participant.

13 What I think should be called the extraneous  
14 stuff, the other information that Mr. Grable has shared with  
15 the Court, this business about my client's name and address  
16 being written in an address book which was apparently seized  
17 in December of 2000 -- excuse me -- which was apparently  
18 seized last year from what is described as a terrorist camp,  
19 now, the Government says it's a terrorist camp, I guess we  
20 have to take their word for it right now; there's really  
21 been no proof other than that conclusory statement. We have  
22 not had the benefit of seeing any such notebook or piece of  
23 paper or anything. For all we know, it's a notebook  
24 containing the names of 100 Imam. For all we know, it's an  
25 address book that was stolen from one of my client's many

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1 relatives still living in Iraq. For all we know, it could  
2 mean almost anything. Nobody I've heard here today is  
3 suggesting that my client was a terrorist in Iraq. I mean  
4 if that's what we're supposed to infer from this, let's say  
5 it, let's prove it. But to say the name of an individual  
6 appears on a piece of paper found by a soldier in a blown up  
7 pile of sand somewhere in the Middle East, that it proves  
8 anything; it doesn't, Judge; it doesn't prove a thing. I'm  
9 told also that the camp was a place where a group called  
10 Ansar al-Islam was located and the Human Rights Watch tells  
11 us that that group never came into existence in Pakistan --  
12 or in Kurdistan until December of 2001, which was six years  
13 after my client left Iraq and a couple years after he left  
14 Syria for the United States as a refugee brought here by the  
15 United Nations High Commission for Refugees.

16 THE COURT: That fact may cut both ways, Mr.  
17 Kindlon. The notebook had his Albany address, not his north  
18 Iraqi address.

19 MR. KINDLON: Well, again, your Honor, we  
20 don't know what that means. We don't know what that means.  
21 It could be -- and I know that Mr. -- excuse me.

22 (Pause.)

23 MR. KINDLON: Mr. Aref asked me to point out  
24 that the address they say was in that book was his address  
25 of five years ago. And, again, your Honor, I do know from

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1 conversations with my client that he has many relatives who  
2 are still in Iraq, living there, including brothers and  
3 nephews and other, other family members.

4 THE COURT: Which brings out the significance  
5 of the word "commander" written next to it.

6 MR. KINDLON: Yes.

7 THE COURT: Any comments on that?

8 MR. KINDLON: Okay. And you know, your  
9 Honor, who says that the word "commander" is the proper  
10 translation. It could be leader. It could be Imam. It  
11 could be father. It could be almost anything. And, you  
12 know, the wisdom of our being able to confront the witnesses  
13 against us is pretty clear right now, because all I can do  
14 is speculate, and all any of us can do is speculate, and I  
15 would respectfully submit if all we can do is speculate in a  
16 court of law, then we ought not to consider the information  
17 to have any significance whatsoever.

18 The fact that money was sent by my client to  
19 his brother -- actually to his brothers, three, three  
20 brothers in Iraq, there's a -- there is, believe me, a  
21 significant dispute over the amount, but there was some  
22 money sent to Iraq to his brothers overseas, they were in  
23 desperate straits there. There was also some mention of a  
24 wire transfer to some character in Greece. The fact of the  
25 matter is the -- and understand, your Honor, I mean, we all

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1 understand, we're dealing here with a very dangerous set of  
2 circumstances across the waters. Imam Aref was told one day  
3 that a nephew of his had been kidnapped and would be  
4 executed unless he sent money. And that's what he did.  
5 Basically he paid a ransom to some unseen, unknown to him  
6 kidnapper in response to a kidnapping threat to save a life.

7 Now, it has also been said in considerable  
8 detail and at some length that certain facts demonstrate  
9 that my client, Imam Aref, is a danger to the community. I  
10 respectfully submit, your Honor, that any objective view of  
11 the circumstances of this man's life lead to the exact  
12 opposite conclusion. Imam Aref is a leader of a small  
13 religious group in a mosque in Albany. Now, again, as an  
14 officer of the Court, I say to you I've been to that mosque,  
15 I went there last Friday afternoon, in time to arrive there  
16 at the conclusion of Friday afternoon prayer, and met there  
17 with about a hundred people, a hundred thoughtful, calm,  
18 solemn and devout people; and they all came to me and told  
19 me how important the Imam was to them and to their mosque;  
20 they told me what a good person he was; they told me what a  
21 good father he was; they told me what a good leader he was;  
22 they told me what a holy man he is. And that's the reality,  
23 Judge. And no Lexis search, no call to the county clerk's  
24 office is gonna come up with any better information than  
25 that. This is a good and moral man, a religious leader.

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1                   And last but not least, the question has to  
2 be asked, is he a risk of flight?

3                   Again, he's the exact opposite of a risk of  
4 flight. You know, the Statue of Liberty, the engraving on  
5 it talks about the huddled masses. And I met my client and  
6 his family, and I thought, my God, this is what we're  
7 talking about; these people are huddled masses; they came  
8 here to get away from a terrible, terrible world; they came  
9 here as refugees, came here for a better life. They're  
10 huddled down, hunkered down. Aref and his wife and their  
11 three children are really for the first time feeling, until  
12 last week, perfectly safe in their lives. Risk of flight?  
13 Far from it. He's got no place to go, Judge. He's here as  
14 a refugee. He can't go to any other country. He doesn't  
15 have a passport. He hasn't got a bus fare to Colonie right  
16 now. There's nothing he can do except stay here.

17                  This Court can fashion conditions which will  
18 protect the community, to the extent that it needs to be  
19 protected, which I respectfully submit is to no extent at  
20 all, but this Court can fashion conditions to satisfy itself  
21 that any protection the community needs, it will have, and  
22 also to ensure my client's appearance at future proceedings  
23 in this case.

24                  There can hardly be a doubt, Judge, but that  
25 this case is going to go to trial. There can't be a doubt

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1 that that's where this matter is headed. And we know from  
2 our experience in the system of justice over the years that  
3 if we move at the speed of light, if we go at flank speed,  
4 we're still talking six to eight months from now before jury  
5 selection can be commenced. And my client's family needs  
6 him back. My client's -- only word I know is as a  
7 westerner -- my client's congregation needs him back; his  
8 people need him back; his people want him here. And under  
9 all the circumstances, your Honor -- and I recognize that  
10 pretrial services has recommended otherwise, and I recognize  
11 that there are some very dramatic claims here, but  
12 nonetheless, the reality is that the factual basis for these  
13 charges is simply insufficient to support the conclusions  
14 that you're being asked to draw about my client's risk of  
15 flight and danger to the community. I respectfully ask you,  
16 Judge, please, exercise your discretion and release my  
17 client, if need be, on conditions; home confinement,  
18 electronic monitoring; GPS, whatever it takes, so that he  
19 can take care of his wife and take care of his children and  
20 serve his congregants and live his life until such time as  
21 we can go to trial and I submit secure a not guilty  
22 determination of this charge.

23 THE COURT: Mr. Kindlon, do you dispute the  
24 Government's assertion that Counts 11 through 19 raise a  
25 presumption?

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1                   MR. KINDLON: I don't, your Honor. I think  
2 that all the facts and circumstances rebut that  
3 predisposition to leave this Court to release my client.

4                   THE COURT: As to their sentencing guidelines  
5 calculation?

6                   MR. KINDLON: Well, Judge, the last time I  
7 checked, there are no sentencing guidelines. I think  
8 Blakely obliterated them. It gives me the greatest pleasure  
9 to agree with Justice Scalia about something after all these  
10 years. The fact is, that it's -- really, it takes a real  
11 leap of faith to get us to a level 36 under these  
12 circumstances, and I think basically what we're dealing with  
13 here is just a regular old money laundering case, Judge, at  
14 best.

15                  THE COURT: Well, one thing we're not going  
16 to decide today is the meaning of Blakely.

17                  Mr. Luibrand.

18                  MR. LUIBRAND: Thank you, your Honor. After  
19 about 20 years in these courtrooms, I can read the tea  
20 leaves and I can tell how proceedings of this nature are  
21 going. Let me point out one critical point and that is that  
22 the proof that there was not an entrapment, the proof of  
23 Mr. Hossain's predisposition to committing these crimes is  
24 at that table (indicating), it's at that table in  
25 determining and calculating the weight of the evidence and

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1       in determining the strength of their case. 1985 he came to  
2       the United States. He worked as a dishwasher, worked his  
3       way up to a cook to chief cook, to owning a pizzeria with a  
4       partner, to owning a pizzeria on his own. He's been here  
5       over 20 years and he's been a United States citizen for ten  
6       years. He has five children. He has a wife. He is the guy  
7       that takes the orders on the pizzas, he's the guy that puts  
8       them in the boxes, he's the guy that runs out to State  
9       Street and Lark Street delivering the pizzas. That's what  
10      he does. If he ain't there, they ain't getting delivered,  
11      and there's no business and there's no income in this  
12      household.

13                                  The predisposition that's been articulated by  
14       the Government with respect to Mr. Hossain is zero,  
15       absolutely zero. No prior criminal record. No prior  
16       engagement, involvement, in any terrorist organizations or  
17       anything even associated with terrorism. The organization  
18       identified by Mr. Grable, Jamaat-e-Islam, is a political  
19       party in Pakistan of which substantial members of the  
20       population are members. It's not a terrorist organization.  
21       And they use words like they're linked to extremists. These  
22       words that mean nothing. That's how you ruin somebody, by  
23       using language like that. That's how you destroy a person's  
24       ability to make a living, by using these words. Their case,  
25       if they can't establish a predisposition by this man to

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1 commit these crimes, is dead. It goes no place. He will  
2 walk out of the courtroom with that. And there's no reason  
3 he should spend the next eight months in jail waiting for  
4 them to come up with a predisposition that they're not  
5 capable of doing today. They're not able to articulate one.  
6 If you go to their affidavit, they have nothing as a  
7 predisposition, up until the point they met, and they got  
8 this confidential informant out there, pedaling, pedaling,  
9 selling licenses and permits. He's selling them. He didn't  
10 go to them. Mr. Hossain didn't go to this guy. This guy is  
11 out on Central Avenue hitting up Muslims, trying to sell  
12 them licenses. That's what he does. And that's how he  
13 walks into my client's business. According to the  
14 complaint, that's how he walks into the business. Selling  
15 licenses. No predisposition. No prior criminal  
16 involvement. No involvement in terrorism. Barely knows the  
17 guy. And he's pedaling a permit for his retarded brother --  
18 I know that's not a politically correct term -- for his  
19 retarded brother so that he has an ID. He can't drive. He  
20 doesn't want to drive, but he needs an ID. Can't even get  
21 into the building without an ID. The kid wanted an ID.  
22 From that, they begin this process of trying to invite these  
23 people to commit crimes. The Government does. The  
24 Government organized, ran, financed and employed the people  
25 to run a criminal conspiracy. And they wanted to find

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1 somebody. And, you know, they didn't go to St. Mary's  
2 Church and they didn't go to the Jewish synagogue. They  
3 went to the Muslims. That's where they went. And that's  
4 wrong. This case rises and falls on entrapment. And I'm  
5 not telling -- everybody in this courtroom knows entrapment  
6 is the central issue in this case, and it's their burden,  
7 and they can't articulate today, today they can't articulate  
8 his predisposition. He should be able to walk out of here  
9 and help me with his defense because I don't have a  
10 battalion of people, lawyers, government, Washington, D.C.  
11 He knows it's me and him, and that's it, and I need his  
12 help. And he needs to get out of here with conditions,  
13 whatever conditions the Court can impose or find reasonable.  
14 He surrendered his passport. The tickets that they claim  
15 that he went and bought weren't even his tickets. They  
16 weren't his wife's tickets. They were for his mother-in-law  
17 and his kids to go to Bangladesh to visit their relatives.  
18 And somehow that's a crime. Somehow the Government is able  
19 to portray that as a crime.

20 THE COURT: As to predisposition, Mr.  
21 Luibrand, the Government articulates reliance upon the  
22 interactions in the course of the offense alleged here, the  
23 ready acceptance and other matters.

24 MR. LUIBRAND: I would -- yes, your Honor. I  
25 would invite your Honor to page 10 and thereafter of their

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1 affidavit. It took this seller, their person, apparently  
2 five meetings t4o try to get a deal together to do this  
3 so-called money laundering. It wasn't like he walked in and  
4 said let's launder money. According to the complaint,  
5 Mr. Hossain asked this guy for a loan. That's according to  
6 the complaint. And there was no exchange, well, how about  
7 this, we launder money. That didn't occur for almost three  
8 more meetings. They started this thing; you need money,  
9 I'll get you money, I'll show you how to get money. That's  
10 what the complaint alleges. I'm relying on what they  
11 present, not what our defense is, but what they present is  
12 what I'm relying on in the complaint. We haven't  
13 cross-examined anybody. You know, we're taking everything  
14 they say at face value. Taking these grainy pictures at  
15 face value. Everything taken at face value. And I'm asking  
16 for the Court to take at face value that this guy is an  
17 American citizen who works like a dog, who has a family that  
18 occupies every waking minute, that and his business, and he  
19 could give a darn about terrorism, he could give a darn  
20 about what happens overseas. He's a regular guy. But he's  
21 got a Muslim last name, and that's the only reason we're  
22 here. That's what started this whole process. And that's  
23 not right. They can't prove a predisposition. And for that  
24 reason, they can't meet that burden today, they're not going  
25 to meet it in six months, and he shouldn't have to wait in

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1 the can for the next six months for that day to arrive.

2 THE COURT: Mr. Grable, anything further?

3 MR. GRABLE: Yes, your Honor, thanks, just  
4 very briefly.

5 Going in reverse order, just on the  
6 chronology of the events, as laid out in the complaint  
7 affidavit, and we submit the evidence will bear out, the  
8 defendant Hossain requested a loan from the cooperating  
9 witness before the missile was displayed, and then, after  
10 the missile was displayed, he reiterated his request for a  
11 loan. Didn't have any concern about the fact that this guy  
12 had just shown him a missile that was going down to the  
13 mujahid brothers in New York City to be used and it's used  
14 to shoot down airplanes. We submit that there's more than  
15 sufficient evidence upon which we're going to be able to  
16 rest on that score. Very briefly --

17 THE COURT: Speaking of that photograph, does  
18 the Government's evidence include any evidence that the  
19 missile itself was ever shown to Mr. Aref?

20 MR. GRABLE: I was going to move to him right  
21 now. No, there won't be any evidence that the missile was  
22 shown to Aref, although we submit that the evidence will  
23 show the trigger mechanism to the missile was shown to Aref  
24 which has been offered for purposes of this hearing as  
25 Government's Exhibit 2, which shows Hossain in the white hat

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in sort of a middle of the picture, Aref to the right of him, and the cooperating witness on the other side of the table. This was January 2nd; this was the day they consummated this first transaction. And if I could have an exhibit sticker, I would just like to mark this for purposes of identification.

7 THE COURT: Have Mr. Kindlon and Mr. Luibrand  
8 seen this?

9 MR. GRABLE: No, but I'll show it to them  
10 right now, and I'll call it 2-A if that's okay with the  
11 Court.

12 || (Pause.)

13 MR. GRABLE: Judge, if you take a look at  
14 Government's Exhibit 2, and I'll hand this up for the  
15 Court's examination, Government's Exhibit 2, it's a grainy  
16 picture, but the cooperating witness is holding something,  
17 and the proof is going to show he's holding what you have in  
18 your hand right now, the trigger mechanism, and it's  
19 described as part of -- during the conversation as the part  
20 of the missile by the cooperating witness as going down to  
21 New York City and we'll bring up another \$45,000. Aref  
22 wasn't shown the missile, but we submit he was shown and  
23 told quite enough to impart knowledge to him as to what was  
24 going to happen.

Very briefly on the personal characteristics,

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1 if I said that he was here illegally, I didn't mean to say  
2 that. I thought I said he's not a lawful permanent  
3 resident. My understanding is Mr. Aref's status is as a  
4 refugee in the United States. What I did want to point out  
5 is sometime in the recent past, according to folks from the  
6 Immigration and Customs Enforcement Service, Aref went in  
7 and requested and completed an application for a travel  
8 document in which he indicated that he intended in part to  
9 travel to Iraq in December 2004 for three weeks. We submit  
10 that this shows his status as a refugee doesn't imperil his  
11 act to travel and shows he's willing to travel and we submit  
12 under the circumstances he's got great reason to travel.

13 THE COURT: Thank you.

14 MR. GRABLE: Thanks.

15 THE COURT: Mr. Kindlon, anything further?

16 MR. KINDLON: If I may just have a moment,  
17 your Honor. My client is saying something to me.

18 (Pause.)

19 MR. KINDLON: My client says that he  
20 understands that we have liberated Iraq, and he and his wife  
21 wanted to go back there to see a sick relative, and as you  
22 can see there by the documentation that Mr. Grable showed,  
23 he was taking the appropriate steps and advising this  
24 country of his intent to do so. Again, I think that that  
25 reinforces our position that my client is here to stay, does

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1 not pose any risk of flight. Thank you.

2 THE COURT: Mr. Luibrand, anything further?

3 MR. LUIBRAND: Nothing, your Honor.

4 THE COURT: Stand in recess for 15 minutes.

5 (Brief recess at 3:35 PM.)

6 (Court reconvened at 4:00 PM.)

7 THE COURT: There are times, and this is one,  
8 when relatively new matters come before the Court. This is  
9 new because the spector of terrorism in the country is new.  
10 And this case raises legal issues which must be decided on  
11 legally competent evidence before the Court, setting aside  
12 passion and the occasional prejudices which occur from time  
13 to time. I'm rewarded that counsel appear to have done that  
14 in their exceptionally well prepared arguments and  
15 presentations. I hope to do the same.

16 I've considered the arguments and  
17 presentations of counsel. The factors I must consider are  
18 set forth in 18 USC Section 3142(g). Those factors are  
19 four, and the first is the nature and circumstances of the  
20 offense. Here, the offense charged is a mixed charge.  
21 First it's money laundering, which, by its nature, is not  
22 necessarily a crime of violence, but it also includes the  
23 charges in counts, I believe it's 11 through 19, which  
24 involves providing material support to terrorist  
25 organization and, therefore, for purposes of bail, creates a

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1 presumption that both defendants would pose a risk of flight  
2 and danger to the community if released. That presumption  
3 there raises a burden of production but not persuasion on  
4 the defense. The burden of persuasion remains with the  
5 Government, although persuasion remains a part of its case.

6                   The second factor is the weight of the  
7 evidence. The weight of the evidence in this case is much  
8 in dispute. It appears from the proffer of the United  
9 States that the offenses in this case involved a government  
10 informant who made contact with Mr. Hossain and, through a  
11 series of transactions, to use the Government's words,  
12 presented him with an opportunity to participate in the  
13 obtaining and delivery of a weapon of mass destruction, a  
14 surface to air missile.

15                  It further appears from the evidence that  
16 Mr. Hossain obtained the participation of Mr. Aref to  
17 witness the transaction in part at least in Mr. Aref's  
18 capacity as the Imam of Mr. Hossain's mosque.

19                  There is no question, as defense counsel  
20 state, that the offense in this case, it appears, was  
21 suggested by the government informant and not by either  
22 defendant. This bears on several other factors I must  
23 consider. There's also no dispute from what the evidence  
24 appears that it was clear to both defendants that the  
25 transaction in question concerned a surface to air missile.

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1       The missile itself was shown personally to Mr. Hossain. The  
2       trigger mechanism was shown to Mr. Aref; and the fact that  
3       it was a trigger mechanism for a surface to air missile was  
4       known to Mr. Aref. Upon reading the complaint, the  
5       description of the trigger mechanism could create a number  
6       of images. When you see a trigger mechanism, there's no  
7       doubt as to what its purpose is and to what the destructive  
8       capability in the context of the conversations is. So while  
9       it is true that the offense in this case was conjured by the  
10      government and presented by a government informant, the  
11      nature of the crime with which the defendants apparently  
12      associated themselves was clearly one of violence and one of  
13      massive proportions.

14           Whether or not they were predisposed to that  
15       will ultimately be a question of fact for the jury, and I  
16       find it difficult to assess that aspect of the case in an  
17       affirmative defense such as entrapment or the claim of  
18       Mr. Aref that he never even knew what the contract was about  
19       without hearing the testimony, but I'm satisfied from the  
20       evidence presented by the Government in its complaint and  
21       search warrant affidavits and here in Court today that the  
22       evidence is at least sufficient. Whether I would describe  
23       it as less than overwhelming because these cases, by their  
24       nature, raise significant questions of fact for resolution  
25       by the jury, sting operations have been ongoing for decades

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1       in the country, going back to before Abscam, but certainly  
2       during Abscam, DeLorean, and a number of other cases. So  
3       they're not unprecedeted. But, certainly, the evidence in  
4       those cases generally, and in this case as well, is less  
5       than overwhelming.

6                                  The third factor is the history and  
7       characteristics of the defendants. As to this factor, the  
8       matters are -- the evidence is somewhat different for the  
9       two defendants. Mr. Aref is a native of Iraq, a resident  
10      for four or five years in Syria, a resident in the United  
11      States for five years. I would describe the refugee status  
12      as a legal resident but of undetermined duration. And  
13      certainly a conviction in this case for Mr. Aref creates a  
14      certainty of deportation. Mr. Aref is, as far as family  
15      ties goes, is married and has three children in the area.  
16      It appears he enjoys the support and respect of the people  
17      in his community, particularly as the head of his mosque.  
18      He has maintained steady employment and residence in the  
19      United States. It also appears as to Mr. Aref, however,  
20      that there are a number of other factors which do not  
21      support his claim for release on conditions. Among other  
22      things, his name with his Albany address and telephone  
23      number were found in a notebook at a -- what is represented  
24      to be a terrorist camp in northern Iraq within the last year  
25      with what is represented to be the word "commander" written

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1 next to it. If true, that evidence carries significant  
2 weight for Mr. Aref's connection to other terrorist  
3 organizations. I note that it is -- the Government's  
4 attorneys as well rely on representations of others as to  
5 what is contained in the notebook page. Unless you are  
6 unable to do so, I would direct you to provide a copy of the  
7 page in question to Mr. Kindlon within seven days. In  
8 addition, however, as to Mr. Aref, it appears that he has  
9 within the last year used a false name in sending out a  
10 mailing from the post office. It further appears that he  
11 had a Syrian identification card which was good through 2007  
12 in his possession at the time of the search of him and his  
13 arrest.

14 As to Mr. Hossain, Mr. Hossain is a United  
15 States citizen and has resided in the United States for  
16 approximately 20 years. He's married with five children  
17 with whom he lives, has -- operates a business, owns rental  
18 property and has otherwise done what anyone would expect and  
19 hope that someone moving to this country would do to root  
20 themselves in the life of this country and contribute to the  
21 community. As a matter of fact, if it were not for the  
22 spector of terrorism, which hovers over this case, there  
23 would probably -- and if this case involved what the  
24 original plan was, for the purchase of false driver's  
25 licenses, there would not even be a dispute about the

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1 release of Mr. Hossain.

2                         The final factor is whether or not the  
3 release of any defendant would pose a danger to a particular  
4 individual or to the community. This is also one of the  
5 bases on which the Government seeks detention. The danger  
6 to the community from both defendants arises, according to  
7 the Government, first from the nature of the offense charged  
8 here and from the fact that the offense charged here  
9 includes laundering money to obtain a weapon of mass  
10 destruction. On the one hand, neither defendant suggested  
11 the idea for that offense. It came from the Government.  
12 That, in itself, suggests to me that the danger to the  
13 community, while it exists, may be addressable if that were  
14 the only factor to consider. The rest of it, however, is  
15 that, as I noted before, the weapon of mass destruction, the  
16 object of the conspiracy here was clearly known to both  
17 defendants from the evidence proffered here, and as I noted  
18 as to Mr. Aref, there is the connection to -- of some sort  
19 to the terrorist camp in Iraq, his use of a false name and  
20 his connections to foreign countries.

21                         Having identified and articulated the factors  
22 I must consider, I must now consider the grounds on which  
23 the Government seeks detention of the two defendants. The  
24 first is danger to the community, and the second is risk of  
25 flight. And I must determine whether there are any

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1       conditions which could be imposed which would address the  
2       dangers which I have previously identified. The options  
3       include personal recognisance bonds, secured bonds, home  
4       detention, electronic monitoring and other things identified  
5       in 18 USC Section 3142.

6                     I will address the matter with respect to  
7       Mr. Aref first. As to danger to the community, there is  
8       clearly a danger to the community which would arise from  
9       Mr. Aref's release. That danger arises not only from the  
10      circumstances of this offense but from Mr. -- the fact of  
11      the name in the notebook at a terrorist camp with the word  
12      "commander" next to it, the willingness to use false names,  
13      the relatively short duration of his life in the United  
14      States, and his connection with foreign countries.

15                   For all of those reasons, I find that  
16       Mr. Aref's release would pose a significant danger to the  
17       community and that the conditions which could be used to  
18       address that are limited. The property available is, in the  
19       circumstances of this case, easily considered a cost of  
20       doing business and, therefore, insufficient. Electronic  
21       monitoring is useful in certain cases, but in most instances  
22       electronic monitoring is available only to tell us when  
23       someone has left. Someone with a mind to leave would have  
24       no difficulty defeating electronic monitoring or home  
25       detention.

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1                   So I find with respect to dangerousness, that  
2 the Government has sustained its burden of proof as to  
3 Mr. Aref and that there are no conditions which would  
4 address that.

5                   As to risk of flight with respect to  
6 Mr. Aref, there is a similar significant danger of flight as  
7 to him. He faces the likelihood of deportation; probably a  
8 certainty if he's convicted. The evidence in this case is  
9 strong, although not overwhelming, and given the penalty the  
10 Government will seek based on its sentencing guidelines  
11 computation, if Mr. Aref is found guilty, the motive to flee  
12 is substantial and perhaps overwhelming in the circumstances  
13 of this case. For the same reason, therefore, the  
14 conditions that are available to ensure against that danger  
15 are insufficient to address the risk of flight as to  
16 Mr. Aref in this case as well. And I find that as to that  
17 basis as well, the Government has sustained its burden.

18                  As to Mr. Hossain, danger to the community,  
19 the danger to the community articulated by the Government  
20 arises solely from the circumstances of this case.

21 Mr. Hossain -- there is no evidence presented that  
22 Mr. Hossain had any connection to any foreign terrorist  
23 organization. There's some evidence that he stated that he  
24 belonged to a political party of some kind that is in a  
25 foreign country, but that by itself would be insufficient to

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1 support any claim of danger. In the circumstances of this  
2 case, the danger arises from his joining in an offense  
3 suggested by the Government, his failure to turn away from  
4 it; that not just a failure to turn away from it, but  
5 willfully joining in it and continuing in it as suggested by  
6 the Government. There may be defenses to that. That  
7 depends on the evidence presented at trial. And since  
8 Mr. Hossain's counsel has been in this case for less than 24  
9 hours, it's impossible for him to articulate at this point  
10 all of the evidence that will be offered in support of that  
11 defense. Based on the record before me, I recognize that  
12 there is a defense to the charge on that basis, but as to  
13 danger to the community, that danger arises solely from a  
14 crime which was suggested by the Government agent in this  
15 case. Mr. Hossain's crime, if any, was the agreement to  
16 accept money from that person, put it through his own  
17 account and give it back to that person in a different form.  
18 That is an offense, but the danger was suggested by the  
19 Government agent, not by Mr. Hossain, and he joined in it.  
20 There is a danger to the community as to Mr. Hossain, I  
21 find, but I also find that there would be conditions which  
22 would adequately address that danger. The risk of flight is  
23 another matter, however.

24 As I noted with Mr. Aref, the charge in this  
25 case is serious and carries with it a substantial penalty.

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1       If the Government is correct, that penalty would include  
2       imprisonment for 20 years or more upon conviction after  
3       trial. The evidence in the case is certainly sufficient to  
4       present to a jury and a defense articulated by Mr. Hossain's  
5       counsel is an affirmative defense which, by its nature, no  
6       doubt requires resolution by a jury. So the risks are great  
7       for conviction. Given those risks, the motive to flee is  
8       substantial. I also consider in this the fact that while  
9       Mr. Hossain -- the offense charged against Mr. Hossain was  
10      somewhat suggested by the Government agent, the nature of  
11      the offense, one of the factors I must consider, was one  
12      which involved a weapon of mass destruction. Mr. Hossain  
13      was not asked to turn away from, as I put it earlier, a trip  
14      to Disneyland or a pound of cocaine, marijuana or a driver's  
15      license. This was a weapon of mass destruction which was  
16      clearly presented to him and in which he clearly joined. So  
17      with respect to -- I do find that the nature of the offense  
18      here supports the Government's claim as well that  
19      Mr. Hossain would pose a danger to the community because it  
20      strengthens the Government's case and, therefore, provides  
21      motive.

22                   On that basis, therefore, alone, I do find  
23      that the Government has sustained its motion and an order as  
24      to that effect as to both defendants will be entered.

25                   Anything further, Mr. Grable?

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1                   MR. GRABLE: Nothing on behalf of the  
2 Government, your Honor. Thank you.

3                   THE COURT: Mr. Kindlon?

4                   MR. KINDLON: No, thank you, Judge.

5                   THE COURT: Mr. Luibrand?

6                   MR. LUIBRAND: Nothing further, your Honor.

7                   THE COURT: Both defendants are remanded to  
8 the custody of the United States Marshal.

9                   THE CLERK: Court stands in recess.

10                  (Court adjourned at 4:15 PM.)

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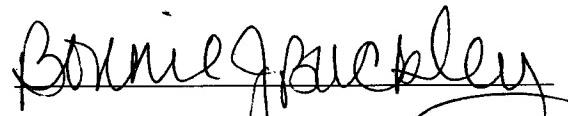
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1                   C E R T I F I C A T I O N

2  
3  
4                   I, BONNIE J. BUCKLEY, RPR, Official Court  
5                   Reporter in and for the United States District Court,  
6                   Northern District of New York, do hereby certify that I  
7                   attended at the time and place set forth in the heading  
8                   hereof; that I did make a stenographic record of the  
9                   proceedings held in this matter and caused the same to be  
10                  transcribed; that the foregoing is a true and correct  
11                  transcript of the same and whole thereof.

12  
13  
14                  

15                  BONNIE J. BUCKLEY, RPR

16                  USDC Court Reporter - NDNY

17  
18  
19                  DATED: AUGUST 17, 2004

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